

1  
2  
3  
4  
5  
6  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 GARY LEE HICKS,  
11 Petitioner,  
12 v.

13  
14 S. HATTON, Warden,  
15 Respondent.

16  
17 Case No. 17-00972 EJD (PR)

18  
19  
20 **ORDER TO SHOW CAUSE**

21  
22 Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus  
23 pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the  
24 filing fee.

25  
26 **BACKGROUND**

27 According to the petition, Petitioner was found guilty by a jury in Monterey County  
28 Superior Court of second degree murder. (Pet. Attach. at 2.) Petitioner was sentenced on  
September 15, 1983, to a term of 15 years-to-life. (Pet. at 1.)

Petitioner appealed his conviction to the state appellate court, and then to the state  
high court which denied review in 1985. (Pet. at 3.) Petitioner filed state habeas petitions,  
which were also denied. (Id. at 3-4.)

Petitioner filed a petition in the “Northern District Court of Appeals,” which was

1 also denied.<sup>1</sup> (Pet. at 4.)

2 Petitioner filed the instant petition on February 24, 2017.

3

## 4 DISCUSSION

5 **A. Standard of Review**

6 This court may entertain a petition for a writ of habeas corpus “in behalf of a person  
7 in custody pursuant to the judgment of a State court only on the ground that he is in  
8 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.  
9 § 2254(a).

10 It shall “award the writ or issue an order directing the respondent to show cause  
11 why the writ should not be granted, unless it appears from the application that the applicant  
12 or person detained is not entitled thereto.” *Id.* § 2243.

13 **B. Legal Claims**

14 Petitioner asserts new evidence supports the petition, specifically: (1) prosecutorial  
15 misconduct by the use of an informant’s false testimony; and (2) the trial court erred in  
16 admitting the “electrophoresis” evidence because the process was not reliable and the  
17 defense was disallowed an independent test because the prosecution consumed all  
18 available sample. (Pet. Attach. at 3-7.) Liberally construed, these claims are cognizable  
19 under § 2254 and merit an answer from Respondent.

20

## 21 CONCLUSION

22 For the foregoing reasons and for good cause shown,

23 1. The Clerk shall serve by mail a copy of this order and the petition and all

24

---

25 <sup>1</sup> It is possible that Petitioner filed a previous federal habeas petition, which would make  
26 the instant action subject to dismissal as a second or successive petition, see 28 U.S.C. §  
27 2244(b)(1), but this fact is not readily apparent from the petition or the attachments thereto.  
Accordingly, Respondent may respond to the appropriateness of such a dismissal in a motion to dismiss.

1 attachments thereto on Respondent and Respondent's attorney, the Attorney General of the  
2 State of California. The Clerk also shall serve a copy of this order on Petitioner.

3       2. Respondent shall file with the court and serve on Petitioner, within **sixty (60)**  
4 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
5 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
6 not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all  
7 portions of the state trial record that have been transcribed previously and that are relevant  
8 to a determination of the issues presented by the petition.

9           If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
10 the Court and serving it on Respondent within **thirty (30) days** of his receipt of the  
11 answer.

12       3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
13 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
14 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court  
15 and serve on Respondent an opposition or statement of non-opposition within **twenty-**  
16 **eight (28) days** of receipt of the motion, and Respondent shall file with the court and serve  
17 on Petitioner a reply within **fourteen (14) days** of receipt of any opposition.

18       4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
19 that all communications with the Court must be served on Respondent by mailing a true  
20 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
21 parties informed of any change of address by filing a separate paper captioned "Notice of  
22 Change of Address." He must comply with the Court's orders in a timely fashion. Failure  
23 to do so may result in the dismissal of this action for failure to prosecute pursuant to  
24 Federal Rule of Civil Procedure 41(b).

25       5. Upon a showing of good cause, requests for a reasonable extension of time  
26 will be granted provided they are filed on or before the deadline they seek to extend.

27       ///

United States District Court  
Northern District of California

1

**IT IS SO ORDERED.**

2

**Dated:** 5/30/2017

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

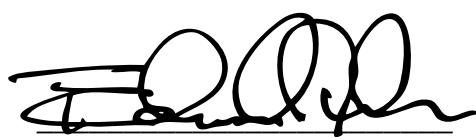
25

Order to Show Cause  
PRO-SE|EJD|HC.17\00972Hicks\_osc

26

27

28



EDWARD J. DAVILA  
United States District Judge